IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4786 OF 2005

Ashit Vinod Shah ...Applicant

vs.

The State of Maharashtra ...Respondent

Mr.Shirish Gupte Sr.Advocate with Mr.P.C.Mankad i/b
Mr.P.D.Desai for the Applicant
Ms M.M.Deshmukh,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : AUGUST 25,2005

P.C.:

1. Heard the learned Counsel for the applicant and the learned A.P.P. for State. The offence registered against the Applicant is under Sections 409, 420, 465, 467, 471 read with Section 34 of the Indian Penal Code. The allegation against the Applicant is that he along with co-accused were Directors of a company by the name M.C.I. Securities Private Ltd. The allegation in the F.I.R. registered by one Sajjan K. Gupta is that between April 2004 to January 2005 large sums were entrusted to the Applicant and the co-accused. According to the complainant the amounts were paid by him by cheques drawn on accounts of M/s.Vidyut Corporation, M/s. Konark Enterprises, Rakesh Gupta Family Trust etc. According to the first informant a sum of Rs.5.30 crores was handed over to the applicant for the purposes of purchasing shares. The case of the first informant is that the number of shares worth about

Rs.8 crores mentioned in the bills have not been transferred to the various Demat accounts of the first informant. The allegation is that the bills issued were false documents and were forged with the object of cheating the first informant. The allegation is of criminal breach of trust and misappropriation.

2. The learned Counsel for the Applicant submitted that after completion of investigation, charge sheet has been filed. He submitted that the transactions between the first informant and the accused were the transactions of commercial nature. He invited my attention to a suit filed by the company of the first informant viz. Vidyut Corporation against the M.C.I. Securities Private Ltd. and the accused. He pointed out that the interim protection has been granted to the Vidyut Corporation. He submitted that the entire claim of the first informant has been secured. He submitted that even according to the prosecution, the entire evidence is based on the documents and therefore the custody of the Applicant is not required. He placed reliance on order dated 16th July 2005 passed by the Additional Sessions Judge in favour of co-accused who is his brother. He submitted that though the order states that co-accused Manish has not signed any documents, in fact there is a record to show that he has signed the documents and therefore the Applicant is entitled to claim parity. He submitted that looking to the nature of

the offence, custody of the Applicant is not required after filing of the charge sheet. He pointed out that the application for bail filed by the Applicant was rejected by the Sessions court on the ground that the investigation was in progress. He pointed out that now chart sheet has been filed.

3. The learned A.P.P. has pointed out that apart from the first informant, large number of investors have come forward whose statements have been recorded. He pointed out the amount of more than Rs.50 crores belonging to the first informant and other investors have been misappropriated by the Applicant and the co-accused. He submitted that though the first informant may have filed a suit and obtained appropriate order, the offence relates not only to the first informant but to a large number of investors who have made serious allegations against the Applicant. He submitted that considering the magnitude of the offence, the gravity of accusations and conduct of the Applicant, there is every possibility that the Applicant may tamper with the prosecution evidence. He pointed out that there are large number of affected investors and therefore the Applicant cannot be enlarged on bail.

4. The considerations which normally weigh with the Court while granting bail in non-bailable offence are the nature and seriousness of the offence, character of the evidence, the

circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, a reasonable apprehension of witnesses being tampered with, larger interests of public or the State and other similar factors which may be relevant in the facts and circumstances of the case. The said principles have been laid down in the recent decision of the Apex Court in a Judgment reported in 2005 All MR (Cri) page 822 (Jayendra Saraswathi Swamigal Vs. State of Tamil Nadu).

5. So far as the claim of parity is concerned, in my view the claim of parity is not available to the Applicant. The co-accused has been granted bail on the basis of a statement made by the learned A.P.P. that the said co-accused has not signed any bills raised by the company on the basis of which the complainant and other investors made a payment to M.C.I. Securities Pvt.Ltd. In view of the concession made by the learned A.P.P. before the Sessions Court, co-accused was enlarged on bail. Therefore, the Applicant is not entitled to claim parity.

6. The order passed by this Court in civil suit filed by the company of the first informant shows that certain interim orders are passed. In the present case, it is to be borne in mind that the activities of the Applicant are not confined to the case of the first informant. The amount involved so far

as the first informant is concerned may be of Rs.8 crores. However, there are other investors who have come forward to make a grievance that even their amounts have been misappropriated by the accused. The statements of many such investors have been recorded which are placed on record. One Gaurav Kaul in his statement has alleged that a total sum of Rs.69 lacs of his family members has been entrusted to the accused persons. One Ashish Parikh has made a complaint regarding a sum of Rs.37.5 lacs. Vidyut Devendra Kumar Shah has stated that bills received from the office of M.C.I. Securities Pvt.Ltd. are found to be bogus. The offence is of very wide amplitude and the amounts allegedly siphoned are more than Rs.50 crores. Though learned Counsel stated that the applicant has repaid Rs.76 lacs, the said fact is disputed by the Investigating Officer. Considering the magnitude of the offence and considering the fact that number of investors have been affected by the offence, there is a substance in the submissions of the learned A.P.P. that the Applicant may try to tamper with the prosecution evidence. In my view, no case is made out for grant of bail. Application is rejected.

JUDGE